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## **Marriage in Iran: Women Caught Between Shi'i and State Law**

*by Ladan Rahbari*



**University of  
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# Marriage in Iran: Women Caught Between Shi'i and State Law

by Ladan Rahbari\*

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## Abstract

*This study investigates juristic Shi'i guidelines as well as philosophical and legal perspectives on marriage in the Iranian contemporary context where specific interpretations of Twelver Shi'a are encoded in civil law. The study discusses three important factors that contribute to the legal and juristic complexity of Shi'i marriage: (i) length of marriage, including discussions on permanent and temporary marriage; (ii) registration of marriage and the problem of unregistered marriages; and (iii) age of marriage and the issue of child marriage. All three factors have been significantly present in the social, public and political debates on marriage and reproduction as well as in women's and children's rights movements in Iran. I outline some of the potential social implications and harmful effects of the existing problematic discourses of temporary, child and unregistered marriages. After discussing the three factors and the diversity of marriage practices, the study contextualizes the existing diversities within the broader Shi'i political and religious discourses.*

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## I. Introduction

Marriage is often described as an important social and economic institution in Islam. Interpretations of Islamic perspectives have shown that existing traditions encourage halal heterosexual relationships, and denounce the practice of celibacy as an unwelcome practice, if not a dishonorable one.<sup>1</sup> Despite the fact that celibacy is neither condemned nor desacralized, and is not considered a sin either, it is heterosexual marriage that gets promoted as the true Islamic way of life. To prove this point, two famous quotations by the Prophet are often used as testimonies. The Prophet of Islam has famously stated, "whoever marries has completed half of their religion"<sup>2</sup> and "marriage is my Sunnah".<sup>3</sup> Islamic perspectives on the importance of heterosexual marriage go hand-in-hand with the religion's attitude towards procreation.<sup>4</sup> Not only satisfying sexual intimacy, but also procreation is promoted in Islamic narratives as a reason for practicing halal heterosexual marriages.<sup>5</sup> Heteronormative perspectives of family that are built around marriage of a man and a woman or women as well as reproduction are currently mainstream in most Muslim majority contexts.

Due to the widespread social acceptance of the importance of the mainstream Muslim family model as well as the integration of Islamic juristic rulings in state laws in many Muslim contexts, Islamic family institution is shaped at the intersection of religious, political and legal discourses. This means that based on the variety of such existing discourses in Muslim contexts, and due to different relationships between religious authorities and the states in power in these countries, a variety of approaches towards marriage and reproduction have emerged.<sup>6</sup> Despite the great diversity in the Middle Eastern region in terms of marriage patterns, one commonly and widely shared value is marriage itself, which remains fundamental to social identity – especially that of women – and the pressure to marry persists.<sup>7</sup> To better understand the variety of social and religious approaches towards marriage, it is important to make a distinction, as Ziba Mir-Hosseini has argued, between Islam as a faith that consists of religious values and principles, and Islam as an organized religion that includes institutions, laws, and regulated practices.<sup>8</sup> Keeping this distinction in mind, this study focuses on the variety of Twelver Shi'i marriage practices in

<sup>1</sup> RIZVI SAYED MOHAMMAD, *Marriage and Morals in Islam*, Al-Islam 1990; HATHOUT HASSAN, *Islamic Views on Some Reproductive Issues*, in: Teebi Ahmad S. / Talaat Farag I. (eds.), *Genetic Disorders among Arab Populations*, New York 1997; ZAREAN MANSOUREH / BARZEGAR KHADIJEH, *Marriage in Islam, Christianity, and Judaism*, Religious Inquiries, Vol. 5 (2016).

<sup>2</sup> ANON, *Hadith: Whoever Marries, Completes Half of Their Religion*, Shi'i Hadith Library, Hadithlib, n.d., available at <<http://bit.ly/2Wjwg6phadithhofmarriage>> (last accessed 21 August 2019).

<sup>3</sup> ANON, *What Is the Meaning of "Marriage Is My Sunnah"?*, Islam Quest, 2013, available at <<http://www.islamquest.net/fa/archive/question/fa23334>> (last accessed 21 August 2019).

<sup>4</sup> ATIGHETCHI DARIUSCH, *The Position of Islamic Tradition on Contraception Medicine*, *Medicine and Law*, Vol. 13 (1994).

<sup>5</sup> IUPUI, *Marriage in Islam*, 2019, available at <<http://www.iupui.edu/~msaiupui/marr.html>> (last accessed 21 August 2019); SAYFUDDIN MURAD / MUHAMETOV ABDULLAH, *Love and Sex in Islam*, Bloomington 2011; SACHEDINA ZULIE, *Islam, Procreation and the Law*, *International Family Planning Perspectives*, Vol. 16 (1990), 107–111.

<sup>6</sup> SACHEDINA, *supra* n. 5; BOONSTRA HEATHER, *Islam, Women and Family Planning: A Primer*, *The Guttmacher Report on Public Policy*, Vol. 4 (2001), 4–7.

<sup>7</sup> TREMAYNE SORAYA, *Modernity and Early Marriage in Iran: A View from Within*, *Journal of Middle East Women's Studies*, Vol. 2 (2006), 65–94.

<sup>8</sup> MIR-HOSSEINI ZIBA, *Muslim Women's Quest for Equality: Between Islamic Law and Feminism*, *Critical Inquiry*, Vol. 32 (2006), 629–645.



the context of Islamic Republic of Iran and the legal measures taken by the state to facilitate or control them.

The study aims to investigate Shi'i guidelines, philosophical and legal perspectives on temporary marriage in the Iranian context where specific interpretations of Twelver Shi'a are encoded into the law. While there are many other factors affecting practices of marriage in Iran, this study will centralize three important factors that contribute to philosophical, legal and juristic complexity of marriage: (i) length of marriage; (ii) registration of marriage; and (iii) age of marriage. It should be noted that this research does not have claims of comprehensive coverage of all the problematic aspects of Shi'i marriage in Iran. Additionally, while comparisons are sometimes made between the pre- and post-Islamic Revolution Iran, the focus of this study is on the philosophical, juristic and legal discourses of marriage that have become prevalent after the Iranian Revolution in 1979. In the following section, the paper first briefly outlines the consequences of the establishment of a Shi'i state of Iran for conditions of marriage, especially for women. Then, the research shifts its focus towards highlighting various issues regarding marriage in Iran's Twelver Shi'i and state discourses.

## II. The Institution of Marriage After the Islamic Revolution: A Brief Overview

Establishment of a Shi'i state in Iran in 1979 resulted in many dramatic transformations in the areas of gender, family and marriage politics among other societal and political issues. The Iranian law after the Revolution has codified religious guidelines and created a body of regulations that should be followed by the people,<sup>9</sup> sometimes regardless of their religious beliefs.<sup>10</sup> The codified religious rulings and the state mandates are a source of legal authority in the land and are separate from rulings by religious institutions that produce up-to-date religious guidelines for personal everyday issues. This means that opposite to the popular belief in the Western world, political and some semi-democratic institutions play an important role in delineating the status and role of religion in the Iranian society.<sup>11</sup> The state regulations and manipulations of reproduction regimes after the revolution have been highly relied on the state's changing views on population growth either as a comparative advantage or as a developmental socio-economic burden.<sup>12</sup> Based on these changing views, in different periods, pronatalist and antinatalist policies have been promoted by the state. While not all the post-revolutionary regulations on family and marriage have brought about equally problematic social consequences,<sup>13</sup> some state policies

<sup>9</sup> OSANLOO AREZOO, What a Focus on "Family" Means in the Islamic Republic of Iran, in: Voorhoeve Maaïke (ed.), *Family Law in Islam: Divorce, Marriage and Women in the Muslim World*, London/New York 2012.

<sup>10</sup> This is the case for many laws, but the most notorious one is the compulsory hijab law that obliges all women over the Shi'i age of puberty to cover their bodies and hair in public spaces regardless of their religion.

<sup>11</sup> ROY OLIVIER, The Crisis of Religious Legitimacy in Iran, *Middle East Journal*, Vol. 53 (1999), 201–216.

<sup>12</sup> ABBASI MOHAMMAD JALAL et al., Revolution, War and Modernization: Population Policy and Fertility Change in Iran, *Journal of Population Research*, Vol. 19 (2002), 25–46.

<sup>13</sup> AFARY JANET, *Sexual Politics in Modern Iran*, New York 2009.

can be considered deteriorations from the progress made in areas of social equality, especially those that were made in the realms of protection of women's rights in the family.<sup>14</sup>

Despite some legal deteriorations, as both Valentine Moghadam and Ziba Mir-Hosseini have argued,<sup>15</sup> the status of women has been improving in many social aspects since the late 1980s, partly due to the efforts of modernizing Muslim women in and around the government; and partly because of the quiet and firm determination by many urban women to continue their education and seek jobs despite the patriarchal attitudes dominating the job market and economic sector.<sup>16</sup> New marriage laws, however, brought about many complexities, some of which were caused by new regulations on the age of marriage, length of marriage, and legal transformations that introduced different legitimized or legalized ways of registering marriages.

In the contemporary Iranian society, perceptions and beliefs on religion and family range from Muslim traditionalism to highly secular tendencies. The existing groups include (but are not limited to) Muslim traditionalists who resist change and promote minimalist version of shari'a, Islamic fundamentalists who want to return to an earlier and purer version of shari'a, as well as secular fundamentalists who deny that religious law could have any value at all.<sup>17</sup> These highly different attitudes are also reflected in diversities of marriage styles and sexual behavior.

This study focuses on three important factors that contribute to the social, legal and juristic complexities of Shi'i marriage in Iran. These three factors are: (i) length of marriage: juristically legitimate and legally encoded into two categories of permanent and temporary marriage; (ii) registration of marriage: which includes privately and nationally registered marriages as well as unregistered marriages; and (iii) age of marriage: a legal and juristic topic of great contemporary relevance, especially due to the alarming rates of child marriage in the country. All three factors have been significantly present in the social, public and political debates on marriage and family as well as in women and children's rights activism in the history of Iran after its establishment as a nation-state, but more specifically after the Islamic Revolution in 1979. These three factors are discussed separately in the following three sections (III–V).

### III. Length of Marriage: Temporary and Permanent Marriages

There are two types of marriage provided by the Iranian Civil Code: permanent and temporary marriages.<sup>18</sup> A permanent marriage is equivalent to the globally practiced form of a legally binding conjugal contract based on a relationship that is often assumed to be life-long or at least long-term. This marriage does not have an end-date and continues as long as the partners agree to maintain the relationship. The practice of temporary marriage on the other hand has historically been referred to a legal form of marriage between a man and a woman for a short and predefined

<sup>14</sup> MOGHADAM VALENTINE, *Revolution, Religion, and Gender Politics: Iran and Afghanistan Compared*, *Journal of Women's History*, Vol. 10 (1999), 172–195.

<sup>15</sup> MOGHADAM, *supra* n. 14; MIR-HOSSEINI ZIBA, *Women and Politics in Post-Khomeini Iran*, in: Afshar Haleh (ed.), *Women and Politics in the Third World*, London/New York 1996.

<sup>16</sup> MOGHADAM, *supra* n. 14.

<sup>17</sup> MIR-HOSSEINI, *supra* n. 8.

<sup>18</sup> BERNARDI ALBERT, *Iran: Family Law after the Islamic Revolution*, *Journal of Family Law*, Vol. 25 (1986), 151–154.

period for which the woman is compensated. While the practice has long been outlawed in Sunni traditions of Islam, it is still considered legitimate in (most) Shi'i jurisprudence and is predominantly practiced in Shi'i contexts, including Iran.<sup>19</sup> While the dominant majority of Shi'i scholars legitimize temporary marriage and it is legal in Iran, there is a small minority among Shi'i scholars who rule it out because they find it neither compatible with social needs in the contemporary societies, nor with the common law,<sup>20</sup> and thus is not juristically justifiable.<sup>21</sup>

In Iran, permanent and temporary marriages have many similarities. Both forms of marriage are based in a form of exchange between the man – as the financial provider and head of the family unit – and the woman who bears the responsibility of providing exclusive sex to her husband in return to financial protection. In discussing the legal structure of temporary marriage, Shi'i jurists employ the analogy of rent, as opposed to the analogy of sale that is sometimes used for permanent marriage.<sup>22</sup> In both forms of marriage, if any children are born, they are eligible to inherit from their parents. In both forms of marriage, *idda*<sup>23</sup> regulations apply to the woman. There are also differences between the two types of marriage. While inheritance from the spouse is the natural result of a permanent marriage, in temporary marriage, the couples do not inherit from each other.<sup>24</sup> Also, a notable difference is that a permanent marriage requires a divorce while a temporary marriage automatically expires after the pre-defined period of marriage has passed. Temporary marriage is thus a marriage “without there being any need for the formalities of divorce”<sup>25</sup> as explained by Shi'i *mujtahid*.<sup>26</sup>

In contemporary Twelver Shi'a Islam in Iran, temporary marriage stays a legal and religious conjugal union between an unmarried woman and a married or unmarried Muslim man (due to laws that sanction polygamy), which is contracted for a fixed time period in return for a set amount of money that the woman receives.<sup>27</sup> The practice of temporary marriage is not only sanctioned, but also encouraged in Shi'i discourses. This is because any form of extramarital sexual relationship is prohibited by Islamic law and is culturally interdicted.<sup>28</sup> Temporary marriage is, in this context, promoted as a halal alternative and an Islamically-sanctioned way to avoid premarital, extramarital and other “illegitimate” sexual relationships. It is thus considered a sanctified way of indulging earthly sexual desires without having to step outside of religious moral guidelines.<sup>29</sup>

<sup>19</sup> HAERI SHAHLA, *Law of Desire: Temporary Marriage in Shi'i Iran*, New York 2014.

<sup>20</sup> In Farsi *orf* and in Arabic *urf*, which refers to mainstream social norms and widely accepted practices.

<sup>21</sup> SAANEI, *Rulings and Conditions of Temporary Marriage*, n.d., available at <<http://saanei.org/index.php?view=01.02.09.3295.0>> (last accessed 19 August 2019).

<sup>22</sup> MIR-HOSSEINI ZIBA, *Mut'a Marriage in Iran: Law and Social Practice*, paper presented at Register Amsterdam, Informal Marriages and Dutch Law, 2003.

<sup>23</sup> This is the period after a divorce during which women should abstain from marrying another man. *Idda* only applies to women and in Shi'a, this period is three lunar months.

<sup>24</sup> SAADAT ASADI LEILA, *Critique of Laws on Marriage Registration*, *Women's Strategic Studies*, Vol. 10 (2008), 103–130.

<sup>25</sup> SOBHANI AYATOLLAH JA'FAR, *Doctrines of Shi'i Islam: A Compendium of Imami Beliefs and Practices*, translated and edited by Shah Kazemi Reza, London 2013.

<sup>26</sup> *Mujtahid* are religious scholars with juristic authority.

<sup>27</sup> ABBASI-SHAVAZI MOHAMMAD JALAL et al., *The “Iranian Art Revolution”: Infertility, Assisted Reproductive Technology, and Third-Party Donation in the Islamic Republic of Iran*, *Journal of Middle East Women's Studies*, Vol. 4 (2008), 1–28.

<sup>28</sup> RAHBARI LADAN, *Premarital Dating Relationships in Iran*, in: Shehan Constance L. (ed.), *The Wiley Blackwell Encyclopedia of Family Studies*, Chisester 2016.

<sup>29</sup> MILANI FARZANEH, *Veils and Words: The Emerging Voices of Iranian Women Writers*, Syracuse 1992.



Temporary marriage was prescribed by the state after the Islamic Revolution, during and after the Iran–Iraq War.<sup>30</sup> It was seen as both a legal solution for widows of men who lost their lives in the war and an outlet for the strict regulations that made dating impossible.<sup>31</sup> After the revolution, the state's promotion of temporary marriage grew gradually. Recently, temporary marriage has been advocated for mostly by conservatives who continue to present it either as a solution for women in vulnerable socio-economic conditions to be protected by men, or as a reaction to the moral panic on Iranian youth's lifestyle. It is seen as a way to hinder un-Islamic relationships that – as it is portrayed by the conservative political and religious forces – have become increasingly more prominent among young Iranians.<sup>32</sup> Despite the continuous promotion of temporary marriage, it remains a largely unpopular practice among young Iranians, and for this, it is often practiced in secrecy.<sup>33</sup>

Since the objective of a temporary marriage is sexual enjoyment, and often involves monetary exchange, temporary wives are often associated with prostitution and do not enjoy the social prestige women seek in a marital relationship, as it often takes place in secrecy and is not a well-respected form of marriage in the Iranian society.<sup>34</sup> Temporary marriage is also largely considered a tool used by permanently married men to expand their sexual experience, while the same opportunity does not exist for married women. The practice of temporary marriage is connected to problematic issues including unregistered marriages and specially, child/early marriages in Iran, as young women have been reported to be one of most prominent groups who are negatively affected by temporary (and sometimes unregistered) marriage.<sup>35</sup> Temporary marriage is, for instance, sometimes used to legitimize early marriage with the approval of the parents.<sup>36</sup> It is conceivable that in countries such as Iran, where the search for equal rights for women in and out of the family continues,<sup>37</sup> young girls and young women would be one of the most vulnerable groups affected by non-egalitarian conditions. I return to the issue of age of marriage in section 5. In the next section, I discuss diverse forms of marriage registration, and the problem of unregistered (temporary or permanent) marriages.

<sup>30</sup> The war between the countries Iran and Iraq was an armed conflict that began on 22 September 1980 after Iraq invaded Iran, and ended on 20 August 1988, when after eight years of conflict, Iran accepted the UN-brokered ceasefire.

<sup>31</sup> AFARY, *supra* n. 13.

<sup>32</sup> ANON, Chastity House: A Place Like a Brothel, Setare, 2016, available at <<https://setare.com/fa/news/5884/>> (last accessed 21 August 2019); SHOJAEI MITRA, Temporary Marriage: The Legal Substitute for Un-Islamic Relationships, 2009, available at <<https://p.dw.com/p/Ky9J>> (last accessed 21 August 2019).

<sup>33</sup> KHALAJ FARIDEH et al., Associations between Family Factors and Premarital Heterosexual Relationships among Female College Students in Tehran, *International Perspectives on Sexual and Reproductive Health*, Vol. 37 (2011); BARARI MOSTAFA et al., Temporary Marriage: Attitude and Tendency in Iran, *Journal of Divorce & Remarriage*, Vol. 53 (2012), 533–542.

<sup>34</sup> TREMAYNE, *supra* n. 7.

<sup>35</sup> BAHRAMI KUROSH, Children Are the Most Prominent Victims of Temporary Marriage, 2018, available at <<https://iranwire.com/fa/features/25199>> (last accessed 19 August 2019).

<sup>36</sup> TREMAYNE, *supra* n. 7.

<sup>37</sup> BOE MARIANNE, *Family Law in Contemporary Iran: Women's Rights Activism and Shari'a*, London/New York 2015.

## IV. Marriage Registration: Private and Nationally Registered and Unregistered Marriages

In Iran, permanent marriages take place only after a compulsory submission of an application by the couple, followed by an official process that includes blood tests and possible vaccinations. If the application is approved, registration of the marriage by a legal authority and entering the marriage information in the birth certificates of both spouses will become compulsory. This law illustrates the integration of legal and religious guidelines and shows that while an Islamic marriage does not require registration to be juristically valid, it does require registration to be considered lawful. As such, unregistered marriages are religiously valid and as long as proof or witnesses of marriage exist, they are not considered indecent behaviour (and are thus not punishable by law like pre-marital relationships); however, they are considered illegal and do not enjoy legal protection. Practicing marriage without registering it in a notary has legal repercussions including a fine and possible jail time for the male partner<sup>38</sup> and a similar penalty for any person(s) marrying the couple without having state authority.<sup>39</sup> To this end, the law gives the male partner twenty days to register the marriage (and a divorce) after the religious ceremony takes place. This has to be done at an official registration authority.

The existence of such strict rules, however, does not mean that unregistered marriages do not take place. The problem of unregistered marriages in Iran is widely understudied and most national statistics published by the government of Iran do not include it in their databases.<sup>40</sup> Additionally, unregistered marriages have connections to other problematic practices such as early or child marriage (to be discussed in the next section); where the practice of early marriage is more prevalent, such marriages often go unregistered as well.<sup>41</sup> Unregistered marriages can have severe social and legal consequences, especially for women, since their rights to fair treatment and financial support are not protected.

While the law is very clear in that registering permanent marriages is compulsory and failing to do so is subject to legal punishment, it is much less coherent and clear in its approach towards registration of temporary marriages. As a general rule, temporary marriages are often considered the Iranian equivalent of common law or unregistered marriages.<sup>42</sup> This is however not completely accurate. While for a permanent marriage there are two possibilities of unregistered (illegal) and registered (legal) marriages, in the case of temporary marriage, there are two legal possibilities. Temporary marriage can be legally practiced with a private registration. In this form, a religious authority (not a legal one) marries the couple and enters their information in a marriage booklet that he stamps.<sup>43</sup> This private registration is not equivalent to a legal document and does not enter a database but is proof of a religiously legitimate relationship. The booklet

<sup>38</sup> ANON, Do You Know Unregistered Marriage Is Illegal?, Mizan Online, 2016, available at <<http://bit.ly/2VPIGYt>> (last accessed 21 August 2019).

<sup>39</sup> Since the man is the head of the family, he is responsible for the registration of marriage. There is no punishment foreseen for the woman; SAADAT ASADI, *supra* n. 24.

<sup>40</sup> Veiled and Wed: Enforced Hijab Laws, Early Marriages, and Girl Children in the Islamic Republic of Iran, Submission to the UN Committee on the Rights of the Child, 71<sup>st</sup> Pre Sessional Working Group, Justice for Iran Publications 2015.

<sup>41</sup> Justice for Iran, *supra* n. 40.

<sup>42</sup> MIR-HOSSEINI, *supra* n. 22.

<sup>43</sup> ANON, Legal Temporary Marriage, Donyaye Eghtesad, 2012, available at <<http://bit.ly/2LYA49e>> (last accessed 21 August 2019).

can however be partially used as a legal proof of marriage and can stand as evidence in a court of law.

The second legal possibility is registering the temporary marriage, which could be performed just like the official registration of a permanent marriage. The registration of temporary marriage can happen if the couple agrees upon it (although they do not have to) and might happen if it is a required condition set by one of the spouses and accepted by the other. Registration of the temporary marriage does, however, become legally compulsory if the temporary wife gets pregnant,<sup>44</sup> and the same legal punishments (as in permanent marriage, discussed above) will apply to the husband if he fails to do so accordingly. A temporary marriage without legally binding private or national registration is considered a valid Shi'i marriage, but the couple does not enjoy any legal rights based on unregistered marriage claims. There is no legal punishment for unregistered temporary marriages if they have been conducted correctly according to the Shi'i doctrine. While it seems that the issue of accidental pregnancy during a temporary marriage is resolved by enforcing compulsory registration, in practice, if the temporary marriage is not registered, it creates a long and hard legal process for the woman to prove her legitimate relationship claims,<sup>45</sup> and otherwise she is prone to harsh social stigmatization and legal issues as the child could be considered out of wedlock if the man does not confirm her claims of marriage.

Annelies Moors has defined unregistered marriages as marriages that "are not registered according to the law of the country where they are concluded".<sup>46</sup> If we accept this definition, based on the above discussion on the legality of privately registered temporary marriages in Iran, they will not be considered unregistered marriages since registration is not a legal requirement. Privately registered marriages have some of the characteristics of an unregistered marriage. For instance, since the marriage information is not entered in the birth certificate, it can be kept a secret, from legal authorities or even from a permanent wife. While there might be personal gains for both men and women, and social advantages in being able to practice a secret temporary marriage, the law in this case, clearly favours a man's right to temporarily marry, over a permanent wife's right to a monogamous conjugal union as well as her right to know about her husband's sexual partners. While a permanently married man can only marry a second permanent wife after receiving an official permission from his first wife and an Islamic court, he can marry a temporary wife without an official permission.<sup>47</sup> This means that while the law obliges men to consult their first permanent wife to temporarily or permanently remarry, there are no legal measures foreseen to actually hinder men's temporary marriage without consulting their first permanent wife.

<sup>44</sup> ALISHAHI ABOLFAZL / ESKANDARI FARZANEH, *Investigating Juristic and Legal Consequences of Not Registering Marriage by Official Registration Authorities*, *Fiqh and Family Law*, Vol. 23 (2018).

<sup>45</sup> ANON, *What Does the Law Say About Pregnancy from a Temporary Marriage?*, Pendaar Group, n.d., available at <<http://bit.ly/2VSRzw8>> (last accessed 21 August 2019).

<sup>46</sup> MOORS ANNELIES, *Unregistered Islamic Marriages: Anxieties About Sexuality and Islam in the Netherlands*, in: Berger Maurits S. (ed.), *Applying Shari'a in the West: Facts, Fears and the Future of Islamic Rules on Family Relations in the West*, Leiden 2013.

<sup>47</sup> ANON, *Rulings of Mujtahid over Man's Remarriage Without Wife's Permission*, Hadana, 2016, available at <<http://bit.ly/2OibXkn>> (last accessed 21 August 2019).

## V. Age of Marriage: Early or Child Marriage

Child (or early) marriage is a marriage where either or both the bride and groom (but in reality, most predominantly the bride) is/are under the legal age of eighteen, which is the age limit for protection under the 1989 Convention on the Rights of the Child.<sup>48</sup> Child marriage is often considered a global issue and a widespread harmful practice that affects great numbers of girls and is practiced for a variety of different reasons in the world.<sup>49</sup> Research on the child marriage phenomenon in Iran show that the most common reasons behind child marriage and forced marriage include the social prestige awarded to girls who marry young, poverty in the girl's family, lack of child support persons/institutions, as well as some cultural traditions and tribal customs.<sup>50</sup> Child marriage is also sanctioned by some religious discourses. While the religious possibility is hardly ever the reason behind child marriage, it is a significant facilitator that both adjusts the moral tone and affects legal possibilities.

According to most Shi'i scholars, a girl is eligible to marry at eight years and nine months and a boy at fourteen years and seven months, when they are supposed to have reached puberty and can reproduce.<sup>51</sup> Despite this, there are some Shi'i *mujtahid* who oppose the majority Shi'i ruling on the age of marriage and advocate for eliminating child marriage because of the harm it causes to the child's life as well as to the religion.<sup>52</sup> While after the Islamic Revolution in Iran, the minimum age of marriage was dropped to the age approved by shari'a law (nine and fifteen), in August 2003, and under pressure from the female members of the Iranian parliament, the age of marriage was raised to thirteen for girls; however, a clause was added stating that earlier marriage is allowed if the girl's guardian and an Islamic court approve the girl's readiness for marriage. This clause has in fact made the application of the law regarding the minimum age of marriage arbitrary.<sup>53</sup>

Statistically speaking, in terms of child marriage, despite the installation of regulations such as decreasing the legal age of marriage, the average age of marriage for both men and women has gradually risen after the Islamic Revolution: Between the years 1976 and 2016, the average age of marriage has increased gradually and steadily from 24 to 27 for men and from 19 to 23 for women. The average age of marriage, however, does not reflect the diversities of attitudes in different provinces of Iran. Child marriages are reported to be most common in the country's religious regions where strict patriarchal social attitudes might be dominant, especially in some areas in Sistan and Baluchestan, Kurdistan, Khuzestan and Khorasan provinces.<sup>54</sup> Additionally, the average age does not reflect the starting age of marriage and can be misleading because of the patterns of age distribution. This seems to be the case in Iran, since UNICEF's report in 2015

<sup>48</sup> TREMAYNE, *supra* n. 7.

<sup>49</sup> MONTAZERI SIMIN et al., Determinants of Early Marriage from Married Girls' Perspectives in Iranian Setting: A Qualitative Study, *Journal of Environmental and Public Health* (2016).

<sup>50</sup> Suuntaus Project, Violence against Women and Honour-Related Violence in Iran, Finnish Immigration Service and The European Refugee Fund, 2015, available at <<http://bit.ly/2TANoAG>> (last accessed 21 August 2019).

<sup>51</sup> TREMAYNE, *supra* n. 7.

<sup>52</sup> ANON, Grand Ayatollah Speaks out against Child Marriage, Radio Farda, 2019, available at <<https://en.radiofarda.com/a/iran-grand-ayatollah-speaks-put-against-child-marriage/29762095.html>> (last accessed 21 August 2019).

<sup>53</sup> TREMAYNE, *supra* n. 7.

<sup>54</sup> Suuntaus Project, *supra* n. 50.

shows that 3 percent of Iranian children marry by the age of 15, and 17 percent marry by the age of 18.<sup>55</sup> According to the latest official statistics inside Iran, more than 29'000 marriages were registered in 2016 that have taken place between brides who were younger than 15 and boys/men of different age groups.<sup>56</sup> The largest age group of men who married girls under 15 years was the 20–24 age groups, making up over 16'900 registered marriages out of all marriages; this was followed by the age groups 25–29, making up over 7'000 registered marriages.<sup>57</sup> Furthermore, because of the issue of unregistered marriages that – as previously discussed – takes place in connection to child marriage, these reported statistics usually do not include information on unregistered and temporary marriages.

The practice of child marriage could bear more severe consequences when coupled with other factors such as temporary and unregistered marriages. Besides the hindering effects on the child's social development, education and possible harmful effects on the child's sexual, physical and mental health among many other negative consequences, early temporary marriage may result in lasting social stigmatization as well. Because of the persisting social value of virginity for permanent marriages,<sup>58</sup> women and girls with previous temporary or permanent marriage history are viewed as “damaged goods” in many social settings, and their future social life – in a context where marriage is still an important source of social status – is put in serious peril. Early pregnancies, losing their spouse and financial support (especially when there is a great age gap between spouses) as well as other legal and social issues attached to unregistered and temporary marriages are among the many problematic aspects of child marriage. Another largely unresolved and ignored problem in both legal and juristic perspectives on child marriage is the issue of consent that needs further exploration (that is beyond the capacity of this paper). Consent connects to another problematic practice, namely forced marriages, and there seems to be a lack of attention to identifying and scrutinizing consent to both marry and have sexual relationship in relation to the age of marriage. In both legal and juristic discourses, it seems that the consent of the legal guardian of a child is automatically considered equivalent to the child's consent, while in many cases, the child's life course, future, social status and image are shaped by a choice that they have had no say in.

## VI. Discussion and Some Concluding Remarks

This study investigated Shi'i guidelines and some philosophical and legal perspectives on temporary marriage in the Iranian context where specific interpretations of Twelver Shi'a are encoded in the law. As I showed in the three lines of discussion on length, registration and age of marriage, a combination of juristic (*fiqhi*)<sup>59</sup> rulings, based on Shi'i jurists' interpretation of shari'a and state legal regulations form the legitimate and lawful ways marriage can be practiced. These legal and *fiqhi* frameworks are, as shown in the three sections, not always compatible with each

<sup>55</sup> Suuntaus Project, *supra* n. 50.

<sup>56</sup> ANON, A Look at the Conditions of Marriage in 2016, Mehrkhane, 2016, available at <<http://bit.ly/2Wn9Fy>> (last accessed 21 August 2019).

<sup>57</sup> ANON, *supra* n. 56.

<sup>58</sup> RAHBARI, *supra* n. 28.

<sup>59</sup> *Fiqhi* is the adjective form of *fiqh*. *Fiqh* is the human attempt, usually by designated scholars, to understand divine law (shari'a). Whereas shari'a is immutable, *fiqh* is changeable, ANON, *Fiqh*, Oxford Islamic Studie Online, n.d., available at <<http://www.oxfordislamicstudies.com/article/opr/t125/e659>> (last accessed 21 August 2019).



other. In the case of length of marriage, there is relatively high similarity between the civil law and the religious guidelines, but while registering a marriage or having a religious authority perform the marriage is not necessary in Shi'a *fiqh*, the law prohibits and punishes those who perform permanent unregistered marriages without the involvement of a religious and legal authority. In the case of age of marriage, the law puts some limitations on practice of early marriage – in the form that is sanctioned by a majority Shi'i *fiqh* – but still leaves enough room for the possibility of practicing child marriage. Additionally, as seen in different cases, Shi'i *fiqh* – which is often portrayed as a homogenous body of religious guidelines by the state – entails diversities and interpretative variations. The rulings can differ based on the scholars' understandings of shari'a as well as their notions of common law. Common law is specifically important in the contemporary model of Twelver Shi'i *fiqh*, where jurisprudence draws on social relevance and implication of their interpretations and rulings.<sup>60</sup> On the other hand, the history of Iran after the Revolution has shown that the *fiqh* and state regulations work as both competing and moderating factors. The integration of Islamic shari'a and the governmental entities in Iran introduces both limitations and possibilities of positive change as the state both facilitates and controls practices of marriage.<sup>61</sup>

This study discussed some of the potential implications of problematic discourses of temporary, child and unregistered marriages. To understand these issues more contextually, it is important to keep in mind that there are several methodological issues in the study of marriage diversity in Iran. First, the lack of qualitative, statistical and demographic data on child and early marriage, unregistered marriages, and privately registered temporary marriages is a significant issue in researching practices and diversities of marriage in Iran. Additionally, I would like to emphasize that Twelver Shi'i perspectives on marriage in Iran are affected by multiple socio-political, juristic and legal discourses outside of those centralized in this paper. For instance, polygamy is accepted and legally sanctioned in Iran. The legal conditions of polygamy and the lack of any restrictions on the number of temporary wives a man can simultaneously marry inevitably complicate the distribution of sexual and social justice in marriage. Another important and unresolved issue that has recently arisen – despite existing opposition by rights and civil society activists – is the bill that passed in the Iranian parliament in 2013 that allowed for marriage between an adopted female child and the adoptive father. While the Shi'i jurisprudence and legal frameworks in Iran have allowed the marriage between the adoptee and the adoptive father to facilitate conditions and terms of adoption, it is believed by some legal and religious groups that performing temporary marriage with the adoptee is not in the child's best interest. As these examples show, the problematic aspects of marriage require attention to multiple discourses and are affected by many different underlying factors, beyond the three issues that were focused upon in this article.

Furthermore, Iranian people's resilience and resistance to state enforced regulations that are considered unjust have been well-documented.<sup>62</sup> In fact, in the case of child and temporary marriage

<sup>60</sup> SHAKERI RUHOLLAH / ABDOLI MARZIEH, Necessity of Islamic Governance with a Focus on Governance-Centered Social Fiqh, Islamic Revolution Researches (Scientific Association of Islamic Revolution In Iran), Vol 4 (2015).

<sup>61</sup> JAFARI ALIAKBAR / MACLARAN PAULINE, Escaping into the World of Make-up Routines in Iran, The Sociological Review, Vol. 62 (2014), 359–382.

<sup>62</sup> COHEN JARED, Iran's Young Opposition: Youth in Post-Revolutionary Iran, SAIS Review of International Affairs, Vol. 26 (2006), 3–16.

it is safe to say that both practices are highly unpopular and looked down upon by a majority of Iranians regardless of the region they live in.<sup>63</sup> On the other hand, as new studies in the Iranian contemporary context show, despite the legal and social pressure to marry, unregistered and non-religious forms of cohabitation can be traced in Iran.<sup>64</sup> This means that, perhaps inevitably, by putting an exclusive focus on legal and juristic perspectives on marriage, many significant cultural and social nuances have been lost in the discussion.

Additionally, the interaction between religion, morality, and sexuality are well-documented in studies on desire and marriage discourses in Iran.<sup>65</sup> While these topics were beyond the thematic focus of this paper, I believe that they are necessary to complement and complicate marriage as a social, legal and (non-)religious institution. It is also my conviction that it is the gravity of social and legal consequences of child marriage, unregistered marriage and temporary marriage, not their popularity or statistical significance, that make it crucial for us to highlight the contemporary religious and political discourses around them. This means that no matter how little or statistically insignificant some of these issues may seem to be, juristic and legal loopholes have to be scrutinized. What is at stake here is not only the well-being, status and protection of vulnerable populations as well as guaranteeing the right to love or sex or a fulfilling marital life, but the standpoints and the imagery of a belief system and its followers. Only by highlighting the harmful effects of religious fundamentalism on Muslim communities on local, regional and global levels can we stimulate the process that includes (self)critique, rethinking mainstream moral frameworks, and eventually, positive reform.

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<sup>63</sup> Suuntaus Project, *supra* n. 50.

<sup>64</sup> MAHBOOBI ELAHEH, "White Marriage" in Contemporary Iran, *Imperial Journal of Interdisciplinary Research*, Vol. 2 (2016), 1283–1288.

<sup>65</sup> GHORASHI ZOHREH et al., Religious Teachings and Sexuality of Women Living in Rafsanjan: A Qualitative Inquiry, *International Journal of Reproductive Biomedicine*, Vol. 15 (2017), 771–778.